



February 26, 2003

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## HOUSE BILL No. 1184

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DIGEST OF HB 1184 (Updated February 25, 2003 10:26 AM - DI 47)

**Citations Affected:** IC 4-13.6; IC 5-16.

**Synopsis:** Retainage on state public works projects. Reduces the amount of retainage that may be withheld by a state agency for a public work contract. Provides that a contract for public work is substantially completed if each separate building, public work, or other division of the contract is completed. Repeals a provision that allows the treasurer of state to charge a contractor a fee for services rendered in connection with an escrow account for the deposit of retainage.

**Effective:** July 1, 2003.

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### Stilwell, Harris, Buck, Brown T

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January 8, 2003, read first time and referred to Committee on Appointments and Claims.  
February 25, 2003, reported — Do Pass.

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February 26, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1184

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 4-13.6-1-19 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 19. "Substantial  
3 completion" means the condition of:

4 (1) a public work; or

5 (2) each separate public work or other division of the  
6 contract:

7 (A) of which a price is stated separately in the contract; or

8 (B) that can be separately ascertained from the  
9 contractor's schedule of values;

10 when it is sufficiently completed, in accordance with the contract  
11 documents as modified by any completed change orders agreed to by  
12 the parties, so that the governmental body for which the public work is  
13 intended can occupy or take possession of the public work **or division**  
14 and use it as it is intended to be used.

15 SECTION 2. IC 4-13.6-7-3 IS AMENDED TO READ AS  
16 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) To determine the  
17 amount of retainage to be withheld, the division shall elect one (1) of

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the following options:

(1) To withhold no more than ~~six percent (6%)~~ **five percent (5%)** of the dollar value of all work satisfactorily completed until the public work is fifty percent (50%) complete, and nothing further after that.

(2) To withhold no more than ~~three percent (3%)~~ **two and one-half percent (2.5%)** of the dollar value of all work satisfactorily completed until the public work is substantially complete.

(b) If upon substantial completion of the work there are any remaining uncompleted minor items, the division shall withhold, until those items are completed, an amount equal to four hundred percent (400%) of the value of each item as determined by the architect-engineer.

SECTION 3. IC 4-13.6-7-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) If the estimated cost of the public works project is at least one hundred fifty thousand dollars (\$150,000), the division shall require the contractor to execute a good and sufficient payment bond to the department for the state in an amount equal to one hundred percent (100%) of the total contract price. The bond shall include at least the following provisions:

(1) The contractor, its successors and assigns, whether by operation of law or otherwise, and all subcontractors, their successors and assigns, whether by operation of law or otherwise, shall pay all indebtedness that may accrue to any person on account of any labor or service performed or materials furnished in relation to the public work.

(2) The bond shall directly inure to the benefit of subcontractors, laborers, suppliers, and those performing service or who may have furnished or supplied labor, material, or service in relation to the public work.

(3) No change, modification, omission, or addition in or to the terms or conditions of the contract, plans, specifications, drawings, or profile or any irregularity or defect in the contract or in the procedures preliminary to the letting and awarding of the contract shall affect or operate to release or discharge the surety in any way.

(4) The provisions and conditions of this chapter shall be a part of the terms of the contract and bond.

(b) The division may permit the bond given by the contractor to provide for incremental bonding in the form of multiple or chronological bonds that, if taken as a whole, equal the total contract

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price.

(c) The division may accept bonds provided on forms specified by the division or on forms given by surety companies.

(d) The division shall hold the bond of a contractor for the use and benefit of any claimant having an interest in it and entitled to its benefits.

(e) The division shall not release sureties of a contractor until the expiration of one (1) year after the final settlement with the contractor.

(f) If the estimated cost of the public works project is less than one hundred fifty thousand dollars (\$150,000) the director may require one (1) of the following:

(1) The contractor must execute a good and sufficient payment bond. The director may determine the amount of the bond to be any percentage, but no more than one hundred percent (100%), of the cost of the project.

(2) The division will withhold retainage under this chapter in an amount of ~~ten percent (10%)~~ **two and one-half percent (2.5%)** of the dollar value of all payments made to the contractor until the public work is substantially completed.

SECTION 4. IC 5-16-5.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. As used in this chapter:

"State agency" means the state of Indiana or any commission or agency created by law.

"Agent" shall include any board, commission, trustee, officer or agent which acts on behalf of a state agency.

"Public building", "public work" and "public improvement" or combinations thereof shall be construed to include all buildings, work or improvements the cost of which is paid for from public funds but shall not include highways, roads, streets, alleys, bridges and appurtenant structures situated on streets, alleys, and dedicated highway rights-of-way.

"Substantial completion" shall be construed to mean the date when the construction of:

**(1) a structure or building; or**

**(2) each separate building, public work, or other division of the contract:**

**(A) of which a price is stated separately in the contract; or**

**(B) that can be separately ascertained from the contractor's schedule of values;**

is sufficiently completed, in accordance with the plans and specifications, as modified by any completed change orders agreed to

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by the parties so that ~~the state agency can occupy the structure or building for the use for which it was intended. Furthermore, the owner could use the structure, building, or division for its intended purpose.~~ The warranty period shall commence no later than the date of substantial completion **for each separate division.**

"Contractor" shall mean any person, firm, limited liability company, or corporation who is party to a contract with a state agency to construct, erect, alter or repair any public building or is any way involved in public work or public improvement.

"Subcontractor" shall mean and include any person, firm, limited liability company, or corporation who is a party to a contract with the contractor and who furnishes and performs on-site labor on any public building, work or improvement. It also shall include materialmen who supply contractors or subcontractors as contained herein.

"Retainage" means any amount to be withheld from any payment to a contractor or subcontractor pursuant to the terms of a contract until the occurrence of a specified event.

"Escrowed principal" shall mean the value of all cash and securities or other property at the time placed in an escrow account.

"Escrowed income" shall mean the value of all property held in an escrow account over the escrowed principal in such account.

SECTION 5. IC 5-16-5.5-3.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3.5. (a) To determine the amount of retainage to be withheld, a state agency shall elect one (1) of the following options:

(1) withhold no more than ~~ten percent (10%)~~ **five percent (5%)** of the dollar value of all work satisfactorily completed until the public work is fifty percent (50%) complete, and nothing further after that; or

(2) withhold no more than ~~five percent (5%)~~ **two and one-half percent (2.5%)** of the dollar value of all work satisfactorily completed until the public work is substantially complete.

(b) If upon substantial completion of the work there are any remaining uncompleted minor items, an amount computed under section 6 of this chapter shall be withheld until those items are completed.

SECTION 6. IC 5-16-5.5-3.1 IS REPEALED [EFFECTIVE JULY 1, 2003].

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Appointments and Claims, to which was referred House Bill 1184, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

HARRIS, Chair

Committee Vote: yeas 10, nays 0.

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